

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 1355 Gainesville Regional Utilities, Alachua County

SPONSOR(S): Local Government Affairs Subcommittee; Perry

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	8 Y, 3 N, As CS	Darden	Miller
2) Regulatory Affairs Committee		Keating	Hamon

SUMMARY ANALYSIS

CS/HB 1355 is a local bill amending the charter for the City of Gainesville to establish the Gainesville Regional Utilities Authority (Authority). Currently, Gainesville Regional Utilities (GRU) is a municipal utility under the authority of the Gainesville City Commission. GRU provides electric, natural gas, water, wastewater, and telecommunications services. The bill transfers authority over the GRU system from the city commission to the Authority, a board to be appointed by the city commission. The bill details the Authority's governance and leadership structure, as well as duties and powers. In summary of its main components, the bill:

- Repeals Section 3.06 of the current City of Gainesville charter relating to the general manager for utilities.
- Establishes the Authority as a regional utilities authority.
- Provides that the Authority is a unit of city government, but free from the direction and control of the city commission and city charter officers.
- Provides that the Authority will consist of 5 members appointed by the city commission.
- Sets qualification requirements for Authority members.
- Provides that the monthly salary for members of the Authority will be \$18,000, adjusted by the consumer price index.
- Staggers the terms of the initial Authority members and provides for four year terms thereafter.
- Provides for removal of members from the Authority for cause, and sets forth grounds for removal from office.
- Gives the Authority the power of eminent domain.
- Gives the Authority exclusive power and authority to bill and collect fees or charges for all utilities.
- Provides that a Chief Executive Officer/General Manager (CEO/GM) will direct and administer utilities functions under the Authority's policies and authority.

The bill takes effect upon its approval by a majority vote of the qualified electors of the City of Gainesville voting in a referendum to be held in March 2017, in conjunction the City of Gainesville's municipal elections, except that sections 4 and 5 shall take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Municipal Utilities

Pursuant to article VIII, section 2(b) of the Florida Constitution, municipalities have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. The legislative body of each municipality has the power to enact legislation on any subject upon which the state Legislature may act, with certain exceptions.¹

Under their home rule power and as otherwise provided or limited by law or agreement, municipalities may provide utilities to citizens and entities within the municipality's corporate boundaries, in unincorporated areas, and even other municipalities. Current law provides that municipalities or an agency of a municipality may be a "joint owner of, giving, or lending or using its taxing power or credit for the joint ownership, construction, and operation of electrical energy generating or transmission facilities with any corporation, association, partnership or person."² Additionally, municipalities are expressly authorized by general law to provide water and sewer utility services.³ With respect to public works projects, including water and sewer utility services,⁴ municipalities may extend and execute their corporate powers outside of their corporate limits as "desirable or necessary for the promotion of the public health, safety and welfare" to accomplish the purposes of chapter 180, F.S.⁵ Current law requires municipalities providing telecommunication services to abide by certain requirements.⁶ Municipal utilities are subject to limited oversight by the Public Service Commission (PSC).⁷ PSC regulation of municipal electric utilities is limited to oversight of safety, reliability, territorial, and rate structure issues.⁸ PSC regulation of municipal natural gas utilities is limited to territorial issues.⁹ Municipal utilities that provide water and/or wastewater service are exempt from PSC regulation.¹⁰

¹ Pursuant to s. 166.021(3)(a)-(d), F.S., a municipality may not enact legislation on the following: the subjects of annexation, merger, and exercise of extraterritorial power, which require general law or special law; any subject expressly prohibited by the constitution; any subject expressly preempted to state or county government by the constitution or by general law; and any subject preempted to a county pursuant to a county charter adopted under the authority of the State constitution.

² FLA. CONST. art. VII, s. 10(d). See ss. 361.10-361.18, F.S.

³ Pursuant to s. 180.06, F.S., a municipality may "provide water and alternative water supplies;" "provide for the collection and disposal of sewage, including wastewater reuse, and other liquid wastes;" and "construct reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems, purification works, collection systems, treatment and disposal works" to accomplish these purposes.

⁴ s. 180.06, F.S., authorizes other public works projects, including alternative water supplies, maintenance of water flow and bodies of water for sanitary purposes.

⁵ s. 180.02(2), F.S. However, a municipality may permit any other municipality and the owners of lands outside its corporate limits or within the limits of another municipality to connect with its water and sewer utility facilities and use its services upon agreed terms and conditions. s. 180.19, F.S.

⁶ See s. 166.047, F.S. (setting forth certain requirements for municipal telecommunication services); s. 350.81, F.S. (providing conditions under which local governments may provide telecommunications services).

⁷ See s. 366.011(1), F.S. (exemption for municipal utilities); s. 367.022(2), F.S. (exempting governmental entities that provide water and/or wastewater service from PSC regulation).

⁸ ss. 366.04(2), (5), and (6), F.S. As of December 2014, there were 34 municipal electric utilities subject to this limited jurisdiction. PUBLIC SERVICE COMMISSION, *Facts and Figures*, published April 8, 2015, available at http://www.floridapsc.com/Files/PDF/Publications/Consumer/Brochure/Facts_Figures.pdf (last visited Feb. 22, 2016).

⁹ s. 366.04(3), F.S. As of December 2014, there were 27 municipal natural gas utilities and 4 special gas districts subject to this limited jurisdiction. PUBLIC SERVICE COMMISSION, *Facts and Figures*, published April 8, 2015, available at http://www.floridapsc.com/Files/PDF/Publications/Consumer/Brochure/Facts_Figures.pdf (last visited Feb. 22, 2016).

¹⁰ s. 367.022(2), F.S.

Most municipal utility systems are governed by the municipality's governing body (i.e., the city commission). Six municipal electric utility systems¹¹ in Florida are governed by separate utility boards, or "authorities," which are typically appointed by the municipality's governing body.¹² These utility authorities vary in structure, though the charter documents for each generally address the powers and duties of the authority (including terms related to rate-setting, financing, acquisitions, and eminent domain), the selection process for authority members (including qualifications and terms of office), the management and personnel of the authority, the transfer of revenues from utility operations to the municipality, and the degree of continuing oversight by the municipal governing body.

Gainesville Regional Utilities

Gainesville Regional Utilities (GRU) was established in 1912 as a city-run electric utility.¹³ It is the fifth largest municipal electric utility in Florida, serving approximately 93,000 retail and wholesale customers in Gainesville and surrounding areas.¹⁴ GRU offers electric, natural gas, water, wastewater, and telecommunications services. An audit for 2012-2013 states that GRU in September 2013 had \$1.2 billion in capital assets, and budgets of \$77.2 million and \$95.2 million in 2014 and 2013, respectively.¹⁵ An audit for 2013-2014 states that GRU's capital assets as of September 2014 increased to \$2.2 billion, noting that the 82% increase in net capital assets was primarily due to a capital lease related to a biomass plant.¹⁶ According to the audit, GRU's net financial position increased by \$16.8 million in 2012 but decreased by \$1.7 million and \$14.1 million in 2014 and 2013, respectively.¹⁷

There are 34 municipal electric utilities in Florida.¹⁸ GRU's residential electric utility rates in December 2015 were the highest in the state among municipal utility providers.¹⁹

The City of Gainesville's charter provides that the city commission appoints an at-will general manager for utilities who is responsible to the city commission and who is responsible for the efficient administration of the utility system.²⁰ The city commission is comprised of seven members: four elected from single member districts, two elected at-large, and one who is elected as mayor.²¹

The charter sets forth the general manager's powers and duties, which provide that the general manager is:²²

- Responsible for and has exclusive management jurisdiction and control over operating and financial affairs of the utility system including, but not limited to, the planning, development, production, purchase, sale, exchange, interchange, transmission and distribution of all

¹¹ These utility authorities include: OUC (City of Orlando), JEA (City of Jacksonville), Kissimmee Utility Authority, City of New Smyrna Beach Utilities Commission, Keys Energy Services Utility Board (City of Key West), and Fort Pierce Utilities Authority. Some of these authorities also govern utilities systems other than the municipal electric utility.

¹² The Keys Energy Services Utility Board is the only utility authority in the state with elected board members.

¹³ Gainesville Area Chamber of Commerce, *A Gainesville Solution: Energy Competitiveness Report*, November 2013, at p. 41, available at <http://www.gainesvillechamber.com/2013/11/gainesville-chamber-releases-energy-competitiveness-report/> (last visited Feb. 22, 2016).

¹⁴ GRU, *About GRU*, <https://www.gru.com/AboutGRU.aspx> (last visited Feb. 22, 2016).

¹⁵ Gainesville Regional Utilities, September 30, 2013 and 2012, Report of Independent Certified Public Accountant, Ernst & Young LLP, available at <https://www.gru.com/Portals/0/Legacy/Pdf/AboutGRU/2012-2013AuditedFinancialStatement.pdf> (last visited Feb. 22, 2016).

¹⁶ Gainesville Regional Utilities, September 30, 2014 and 2013, Financial Statement and Independent Auditors' Report, Purvis Gray & Company, at p. 8, available at <https://www.gru.com/Portals/0/Legacy/Pdf/AboutGRU/2013-2014AuditedFinancialStatement.pdf> (last visited Feb. 22, 2016).

¹⁷ *Id.* at p. 5.

¹⁸ FLORIDA MUNICIPAL ELECTRIC ASSOCIATION, *Florida Municipal Utility Map*, available at <http://publicpower.com/florida-municipal-utility-map/> (last visited Feb. 22, 2016).

¹⁹ FLORIDA MUNICIPAL ELECTRIC ASSOCIATION, *Florida Electric Bill Comparisons*, available at <http://publicpower.com/electric-rate-comparisons/> (last visited Feb. 22, 2016).

²⁰ City of Gainesville Charter, Art. III, s. 3.06.

²¹ CITY OF GAINESVILLE, *City Commission*, available at <http://www.cityofgainesville.org/CityCommission.aspx> (last visited Feb. 22, 2016).

²² City of Gainesville Charter, Art. III, s. 3.06(2)(a)-(h).

electricity; the planning, development, purchase, sale, exchange, interchange, transmission and distribution of all natural gas; the planning, development, supply, treatment, transmission, distribution and sale of all potable water; and the planning, development, collection, treatment, disposal and billing of all wastewater now or hereafter provided by the city;

- Required to submit to the city commission for its consideration a yearly budget for the operation of the utility system;
- The purchasing agent for all equipment, materials, supplies, and services necessary for operating and maintaining the utility system subject to policies promulgated by the city commission;
- Required to propose ordinances to designate the job titles of subordinates that are to be considered directors of departments;
- Required to appoint and, except as otherwise provided in the charter, remove all directors of departments at will;
- Required to recommend to the city commission all measures necessary and expedient for the proper governance and management of the utility system;
- Required to keep the city commission fully advised as to the management, governance and needs of the utility system; and
- Required to perform all other duties prescribed by law, this charter, ordinance, or direction of the city commission.

The charter also prohibits the city commission from disposing of, or agreeing to dispose of, in whole or part, the city's electrical or water production or distribution facilities so as to materially reduce the city's capacity to produce or distribute electrical energy or water, except by ordinance with the prior approval of a majority vote of the qualified electors of the city.²³

The Code of Ordinances for the City of Gainesville provides for an Energy Advisory Committee comprised of 9 members appointed by the city commission.²⁴ The committee has the following duties, functions, powers, and responsibilities:

- Serve as a communications channel between the city commission, utility staff, and the citizens of the city, in order to understand and solve the many complex problems relating to energy;
- Promote public access to information on the city's facilities, services, policies, and programs concerning energy, and consider the future energy needs of the community with respect to the utilities as well as general government;
- Assist utility staff by suggesting and reviewing policies affecting programs and services that affect acquisition, delivery, or utilization of energy resources within the community; and
- Perform any other duties which may be within the purview of the committee which may be assigned by the city commission.

There also is a Regional Utilities Committee, containing three city commissioners and an ex-officio member representing the Alachua County.²⁵

Chapter 27 of the Code of Ordinances for the City of Gainesville sets forth regulations pertaining to each municipal utility system.²⁶

In November 2013, the Gainesville Area Chamber of Commerce and Council for Economic Outreach submitted a report to the City of Gainesville.²⁷ The study was conducted by a 12-member Energy Study Group, led by Representative N. David Flagg, who is a former Mayor of Gainesville, and Dr. David A. Denslow, Jr., a retired University of Florida economist.²⁸ According to the report, Gainesville

²³ *Id.* at s. 5.04.

²⁴ City of Gainesville Code of Ordinances, ch. 2, art. III, div. 7.

²⁵ Navigant Consulting LLC, *Re: Independent Investigative Review of the Gainesville Regional Utilities (GRU)*, April 15, 2015, at p.171, available at <http://www.cityofgainesville.org/CityCommission/NavigantReviewofGRU.aspx> (last visited Feb. 22, 2016).

²⁶ City of Gainesville Code of Ordinances, ch. 27, art. I-VI.

²⁷ *A Gainesville Solution: Energy Competitiveness Report*, *supra* note 13.

²⁸ *Id.* at p. 6.

is a unique city with about 58% of property off the tax rolls.²⁹ The City Commission has directly governed GRU for over 100 years.³⁰ According to the report, GRU's combined municipal utility system operation is composed of five Enterprise Funds (Electric System, Water System, Wastewater System, Gas System, and Telecommunications/GRUCom).³¹

The report provides four policy recommendations for the City of Gainesville "to help Gainesville remain a competitively advantaged community for sustainable economic development as it relates to overall energy costs."³² The fourth recommendation provides that the method of governance be changed to an appointed utility authority.³³ The report notes that JEA (formerly known as Jacksonville Electric Authority), is the largest municipal utility in Florida.³⁴ It has a governance structure under which the board is appointed by the Mayor of Jacksonville, subject to confirmation by the Council.³⁵ The report also notes that the Orlando Utilities Commission board appoints its own members from a pool of candidates identified by a city nominating committee,³⁶ and that Lakeland Electric has a Commission/Customer Committee Hybrid.³⁷ The report states that the City of Tallahassee has a City Commission governance model.³⁸ According to the report, Florida cities with an appointed utility authority "are more competitive than Gainesville in commercial and industrial customer class electricity costs," noting that Jacksonville, Orlando, Kissimmee, Fort Pierce, and New Smyrna Beach each have an appointed utility authority and that "[c]ommercial and industrial customer class electricity costs in those cities are significantly lower than in Gainesville."³⁹

Effect of Proposed Changes

The bill provides for a referendum to be held in March 2017 at which the qualified electors of the City of Gainesville will determine whether to amend the City of Gainesville's charter to create a utility authority to govern GRU's utilities systems. If approved by a majority of those voting in the referendum, Article VII will be added to the city's charter to establish the Gainesville Regional Utilities Authority (Authority) as set forth in the bill. The following chart summarizes the provisions of the charter amendment.

ARTICLE VII - GAINESVILLE REGIONAL UTILITIES AUTHORITY	
7.01 Establishment	
	<ul style="list-style-type: none"> Creates a regional utilities commission, named the "Gainesville Regional Utilities Authority (Authority)." Provides that GRU will be governed by the Authority upon the installation of the Authority's governing members pursuant to Article VII. Provides that the Authority operates as a unit of city government, but is "free from direction and control of the city commission and city charter officers." Lists express purposes for the Authority, including "otherwise having broad authority with respect to utilities."
7.02 Definitions	
	<ul style="list-style-type: none"> Defines for the purpose of Article VII: <ul style="list-style-type: none"> "Authority," "City," "City commission," "County," "GRU," "Member," "Utilities."
7.03 Authority members	
7.03(1)	<ul style="list-style-type: none"> Provides for the appointment of five members by majority vote of the city commission.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at p. 43.

³² *Id.* at p. 7.

³³ *Id.*

³⁴ *Id.* at p. 51.

³⁵ *Id.* at p. 50.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at p. 7.

	<ul style="list-style-type: none"> ○ One member must be a residential customer with “substantial knowledge of GRU, its operations, and its history.” ○ One member must be the owner or representative of a private, non-governmental customer consuming at least 10,000 kilowatt hours per month of electricity during the previous twelve months. ○ Three members shall be “competent and knowledgeable in one or more specific fields including, but not limited to, law, economics, accounting, engineering, finance, or energy.” • Requires that appointees be persons of recognized ability and good business judgment, as identified by the city commission.
7.03(2)	<ul style="list-style-type: none"> • Provides that each member of the Authority must: <ul style="list-style-type: none"> ○ Maintain primary residence within GRU's electric service territory; ○ Receive GRU electric utility system service at all times during term of appointment; ○ Not have been convicted of a felony as defined by general law; and ○ Be a qualified elector of the City of Gainesville, except that at least one member must be a resident of the unincorporated area of Alachua County or a municipality in the county other than the City of Gainesville.
7.03(3)	<ul style="list-style-type: none"> • Provides that the composition of the Authority must be adjusted at the expiration of each member's term to reflect the ratio of electric meters serving customers outside the city boundaries to electric meters serving all customers (e.g., if 40% of GRU electric meters are serving customers outside the city boundaries at the time of a vacancy, a second Authority member must be appointed from outside the city boundaries).
7.03(4)	<ul style="list-style-type: none"> • Prohibits, until January 1, 2022, the appointment of any current or previous elected or appointed city or county officer or official who held office after January 1, 2000.
7.03(5)	<ul style="list-style-type: none"> • Prohibits members from serving more than three full consecutive four-year terms.
7.04 Member terms	
7.04(1)	<ul style="list-style-type: none"> • Requires the city commission to make initial Authority member appointments within 120 days from voter approval in the required referendum for the following terms: <ul style="list-style-type: none"> ○ Initial member term starts at midnight on October 1, 2017. ○ Staggered initial terms: one member each for a one, two, and three year term, two members with four year terms. • Provides for four year terms for subsequent appointments, taking effect at midnight on October 1 of the year in question. • Provides that members appointed to complete an unexpired term shall serve from the time of appointment until the end of the term.
7.04(2)	<ul style="list-style-type: none"> • Requires city commission to expeditiously schedule an appointment session and fill any vacancy within 60 days after a permanent vacancy occurs or becomes known, if more than three months remains in the term.
7.05 Member compensation	
	<ul style="list-style-type: none"> • Establishes an annual member salary for of \$18,000 starting October 1, 2017, indexed to the Consumer Price Index for All Urban Consumers. • Provides for reimbursement of member's necessary expenses in accordance with Authority policy and procedures, subject to approval by a majority of the members of the Authority. • Prohibits supplemental benefits for members.
7.06 Authority, oath, organization, and meeting	
7.06(1)	<ul style="list-style-type: none"> • Provides for an initial meeting to be held October 4, 2017, at 6:00 p.m. at the chambers of the city commission.
7.06(2)	<ul style="list-style-type: none"> • Requires each Authority member to take an oath or affirmation, given by the mayor or his/her designee, similar to the oath or affirmation required of a member of the city commission.
7.06(3)	<ul style="list-style-type: none"> • Specifies that the first official act of the Authority is electing a chair and a vice chair from among its membership.
7.06(4)	<ul style="list-style-type: none"> • Requires that the Authority meet at least once a month.

	<ul style="list-style-type: none"> Requires meetings to be noticed and open to the public. Requires that minutes of each meeting be kept in accordance with public records law, except that meetings related to settlement of pending litigation may be held in accordance with law.
7.06(5)	<ul style="list-style-type: none"> Specifies that GRU's "sitting general manager" is responsible for providing adequate notice and office space for the initial meeting.
7.07 Appointment and removal of chief executive officer/general manager	
7.07(1)	<ul style="list-style-type: none"> Makes the CEO/GM responsible for direction and administration of utility functions.
7.07(2)	<ul style="list-style-type: none"> Empowers the Authority to appoint or remove the CEO/GM by majority vote.
7.07(3)	<ul style="list-style-type: none"> Provides that the sitting GM of GRU, absent further action by the Authority, shall be retained in office as the CEO/GM.⁴⁰
7.07(4)	<ul style="list-style-type: none"> Provides that a sitting member of the Authority may not be selected as the CEO/GM.
7.08 Removal and suspension of members	
7.08(1)	<ul style="list-style-type: none"> Provides that a member may be removed or suspended in accordance with chapter 112, F.S.
7.08(2)	<ul style="list-style-type: none"> Provides that a member may be removed for failure to maintain all voting qualifications specified in section 7.03.
7.08(3)	<ul style="list-style-type: none"> Provides that a member who is the subject of a suspension or removal proceeding may not deliberate, debate, or vote on the matter.
7.08(4)	<ul style="list-style-type: none"> Provides that suspension requires the votes of at least three members of the Authority.
7.08(5)	<ul style="list-style-type: none"> Provides that removal or reinstatement requires the votes of at least three members of the Authority.
7.09 General provisions	
7.09(1)	<ul style="list-style-type: none"> Requires the city commission to create instruments necessary for the Authority to function in accordance with the terms of the charter amendment.
7.09(2)	<ul style="list-style-type: none"> Provides that utilities-related ordinances, policies, rates, fees, rules, regulations, budgets, and other provisions previously adopted by the city commission are deemed adopted, reenacted, or assumed by the Authority until modified by the Authority. Repeals City of Gainesville and Alachua County charter provisions, ordinances, resolutions, decrees, and parts thereof, to the extent of conflict with the charter amendment.
7.09(3)	<ul style="list-style-type: none"> Prohibits the City of Gainesville or Alachua County from levying on the Authority or GRU a franchise, right-of-way, license, permit or usage fee or tax, unless allowed to do so by general law. Prohibits the city or county from levying on the Authority or GRU any such fee or tax that imposes an unreasonable burden. Limits the assessment after April 30, 2016, of any "additional allowable but not required" franchise, right-of-way, license, permit or usage fee or tax as to the Authority or GRU, subject to waiver by a vote of four Authority members.
7.09(4)	<ul style="list-style-type: none"> Provides that the rights and privileges of any GRU employee, including the GM, as of the effective date of the charter amendment, are not impaired.
7.09(5)	<ul style="list-style-type: none"> Provides that existing utility advisory boards created by the city commission may continue advising the commission, but may not have an advisory role as to the Authority, GRU, and the employees of the Authority and GRU.
7.10 Powers and duties	
7.10(1)	<ul style="list-style-type: none"> Provides that the Authority's powers and duties are no less extensive than those exercised by the city commission with respect to GRU as existed on January 1, 2016, including powers and duties associated with management, operation, and control of the utilities; the acquisition, construction, and financing of utility projects; and the provision of utility-related products and services.

⁴⁰ This language provides continuity in the period from March 2017 to Oct. 4, 2017, where the current GM position appointed by the city has been eliminated, but the governing board of the Authority has not yet taken office.

7.10(2)	<ul style="list-style-type: none"> Authorizes the Authority to adopt rules, policies, and regulations to govern its operations, consistent with the charter amendment and applicable law.
7.10(3)	<ul style="list-style-type: none"> Prohibits the Authority from enacting rules related to disposal or sale of GRU property that are more expansive than the rules applicable to the city commission as of January 1, 2016.
7.10(4)	<ul style="list-style-type: none"> Authorizes the Authority to exercise the power of eminent domain for utilities purposes.
7.10(5)	<ul style="list-style-type: none"> Provides that all existing laws, ordinances, resolutions, and administrative regulations, interpretations, franchises, and controls of the City of Gainesville that relate to the utilities are exclusively vested in the Authority. Provides that the Authority retains all rights, claims, actions, orders, and legal or administrative proceedings involving GRU before the effective date of the charter amendment, except as may be modified by the Authority.
7.10(6)	<ul style="list-style-type: none"> Provides that Authority members are not individually responsible for Authority debts.
7.10(7)	<ul style="list-style-type: none"> Requires the Authority to develop an ethics policy and code of business conduct policy and review those policies at least biennially.

In addition, if approved by a majority of those voting in the referendum, Section 3.06 of Article III of the City of Gainesville's charter⁴¹ will be repealed. This section authorizes the city commission to appoint a general manager for utilities. Because the charter amendment makes the selection of the general manager for GRU a power of the Authority, this section of the charter would become obsolete. As noted above, the bill creates Article 7.07(3) of the charter which provides that the current general manager appointed by the city shall be retained as the CEO/GM absent action by the Authority.

The bill provides that the chair of the Authority or his/her designee is authorized to execute documents required for the transition from the current management structure to the one implemented by the charter changes of the bill.

B. SECTION DIRECTORY:

- Section 1: Repeals section 3.06 of Article III of section 1 of chapter 90-394, Laws of Fla., authorizing the Gainesville City Commission to appoint a General Manager for Utilities.
- Section 2: Amends the charter of the City of Gainesville to establish the Gainesville Regional Utilities Authority to oversee and manage the city's municipal utility systems, which include the electric utility system, water utility system, wastewater utility system, re-use water utility system, natural gas utility system, and communications utility system.
- Section 3: Provides that the chair of the Authority or his/her designee is authorized to execute documents during the transition period.
- Section 4: Provides the form of the ballot question to be presented to the qualified electors of the City of Gainesville in the referendum provided for by Section 5.
- Section 5: Provides that the bill shall only take effect upon its approval by a majority vote of the qualified electors of the City of Gainesville voting in a referendum to be held in March 2017, except that Sections 4 and 5 shall take effect upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes ☐ No ☒

IF YES, WHEN?

WHERE?

B. REFERENDUM(S) REQUIRED? Yes ☒ No ☐

⁴¹ Ch. 12760 (1927), Laws of Fla., as amended by ch. 90-394, s. 1, Laws of Fla.

IF YES, WHEN? March 2017, in conjunction with the City of Gainesville's municipal elections.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The charter amendment proposed by the bill creates a governing structure under which the Authority manages and operates the City of Gainesville's utilities systems assets in place of the city commission. The proposed charter amendment provides that the Authority, while a "unit of city government," will operate "free from direction and control of the city commission and the city charter officers." Given this context, the bill should clearly specify the respective powers of the Authority and the City, though this clarity is lacking in some instances.

First, while the proposed charter amendment empowers the Authority to acquire, construct, and finance utility projects, it does not clearly specify ownership of utility assets acquired, constructed, or financed by the Authority.

Second, the proposed charter amendment does not establish limits or checks on the Authority's powers to acquire, construct, and finance utility projects on behalf of the city, and it does not specify the source of the Authority's bonding authority to finance projects. As drafted, the bill may be construed to allow the Authority to issue general obligation bonds in the name of the city. Further, because the proposed charter amendment defines "utilities" to include utility systems that are acquired in the future, beyond those systems currently operated by GRU, it may be construed to authorize the Authority to enter new lines of utility business in the name of the city.

Third, the proposed charter amendment does not specifically address the transfer of GRU funds to the City of Gainesville. Between fiscal years 1990 and 2012, transfers from GRU to the city budget averaged 11.4 percent of city operating revenue per year.⁴²

These provisions should be clarified to ensure the bill is implemented as intended.

In addition, Section 7.05 states that the necessary expenses of members shall be "paid in accordance with authority policy and procedures, subject to the approval of a majority of the members of the authority." It is unclear if only the policy and procedures concerning payments are subject to a majority vote, or if each individual expense payment requires board approval.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 25, 2016, the Local Government Affairs Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment clarifies the transition process from city control of GRU to management by the Authority, clarifies the qualification standards for Authority members, and makes the powers and duties of the Authority more explicit.

This analysis is drawn to the bill as amended.

⁴² *A Gainesville Solution: Energy Competitiveness Report*, *supra* note 11, at 11.

